

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

KODY CREE PATTEN,

v.

WILLIAM RUEBART,

Plaintiff,

Defendant.

Case No. 3:22-cv-00226-ART-CSD

DISMISSAL ORDER

Plaintiff Kody Cree Patten attempted to initiate a lawsuit in this Court by filing a “notice of appeal.” (ECF No. 1-1). This Court issued an order directing Plaintiff to file a civil rights complaint, a petition for writ of habeas corpus, or to voluntarily dismiss this case if initiated in error. (ECF No. 6). Plaintiff did not respond, and his mail is being returned as undeliverable. (ECF Nos. 3, 4, 5, 8). The Court issued an order directing Plaintiff to update his address and submit a proper initiating document in this case by August 26, 2022. (ECF No. 9). That deadline expired without any filings from Patten, and his mail from the Court is being returned as undeliverable. (*See* ECF No. 10.)

**I. DISCUSSION**

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. *See Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of

1 address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987)  
 2 (dismissal for failure to comply with court order). In determining whether to  
 3 dismiss an action on one of these grounds, the Court must consider: (1) the  
 4 public's interest in expeditious resolution of litigation; (2) the Court's need to  
 5 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy  
 6 favoring disposition of cases on their merits; and (5) the availability of less drastic  
 7 alternatives. See *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217,  
 8 1226 (9th Cir. 2006) (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th  
 9 Cir. 1987)).

10 The first two factors, the public's interest in expeditiously resolving this  
 11 litigation and the Court's interest in managing its docket, weigh in favor of  
 12 dismissal of Patten's claims. The third factor, risk of prejudice to defendants,  
 13 also weighs in favor of dismissal because a presumption of injury arises from the  
 14 occurrence of unreasonable delay in filing a pleading ordered by the court or  
 15 prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir.  
 16 1976). The fourth factor—the public policy favoring disposition of cases on their  
 17 merits—is greatly outweighed by the factors favoring dismissal.

18 The fifth factor requires the Court to consider whether less drastic  
 19 alternatives can be used to correct the party's failure that brought about the  
 20 Court's need to consider dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983,  
 21 992 (9th Cir. 1999) (explaining that considering less drastic alternatives *before*  
 22 the party has disobeyed a court order does not satisfy this factor); accord  
 23 *Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that  
 24 “the persuasive force of” earlier Ninth Circuit cases that “implicitly accepted  
 25 pursuit of less drastic alternatives prior to disobedience of the court’s order as  
 26 satisfying this element[,]” i.e., like the “initial granting of leave to amend coupled  
 27 with the warning of dismissal for failure to comply[,]” have been “eroded” by  
 28 *Yourish*). Courts “need not exhaust every sanction short of dismissal before

1 finally dismissing a case, but must explore possible and meaningful  
2 alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986).  
3 Because this action cannot realistically proceed without the ability for the Court  
4 and the defendants to send Patten case-related documents, filings, and orders,  
5 the only alternative is to enter a second order setting another deadline. But  
6 without an updated address, the likelihood that the second order would even  
7 reach Patten is low, so issuing a second order will only delay the inevitable and  
8 further squander the Court’s finite resources. Setting another deadline is not a  
9 meaningful alternative given these circumstances. So, the fifth factor favors  
10 dismissal.

11 **II. CONCLUSION**

12 Having thoroughly considered these dismissal factors, the Court finds that  
13 they weigh in favor of dismissal. It is therefore ordered that this action is  
14 dismissed without prejudice based on Patten’s failure to file an updated address  
15 in compliance with this Court’s July 28, 2022, order. The Clerk of Court is  
16 directed to enter judgment accordingly and close this case. No other documents  
17 may be filed in this now-closed case. If Patten wishes to pursue his claims, he  
18 must file a complaint or a habeas petition in a new case and provide the Court  
19 with his current address.

20 DATED THIS 8th day of September 2022.

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23 ANNE R. TRAUM  
24 UNITED STATES DISTRICT JUDGE  
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